

1 LATHAM & WATKINS LLP  
Michael H. Rubin (Bar No. 214636)  
2 *michael.rubin@lw.com*  
Melanie M. Blunschi (Bar No. 234264)  
3 *melanie.blunschi@lw.com*  
4 505 Montgomery Street, Suite 2000  
San Francisco, California 94111  
5 Telephone: +1.415.391.0600

6 Serrin Turner (*pro hac vice*)  
*serrin.turner@lw.com*  
7 1271 Avenue of the Americas  
New York, NY 10020  
8 Telephone: +1.212.906.1200

9 Margaret A. Upshaw (*pro hac vice*)  
10 *maggie.upshaw@lw.com*  
555 Eleventh Street, NW, Suite 1000  
11 Washington, D.C. 20004  
Telephone: +1.202.637.2200

12 *Attorneys for Defendant Gen Digital Inc.*  
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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17 GRACE LAU, CHRISTOPHER  
18 KARWOWSKI, MELODY KLEIN,  
MICHAEL MCBRIDE, and AIMEN  
19 HALIM, individually and on behalf of all  
others similarly situated,

20 Plaintiffs,

21 v.

22 GEN DIGITAL INC. a corporation,  
23 Defendant.  
24

Case No. 3:22-cv-08981-RFL-SK

**DECLARATION OF SERRIN TURNER IN  
SUPPORT OF OPPOSITION TO  
PLAINTIFFS' MOTION TO COMPEL  
COMPLIANCE WITH SUBPOENAS  
PURSUANT TO FEDERAL RULE OF CIVIL  
PROCEDURE 45**

Hon. Sallie Kim

1 I, Serrin Turner, declare as follows:

2 1. I am a partner at Latham & Watkins LLP and represent Defendant Gen Digital Inc.  
3 in this action. I am a member in good standing of the bar of the State of New York and am admitted  
4 *pro hac vice* by this Court.

5 2. I respectfully submit this declaration in support of Defendant's Opposition to  
6 Plaintiffs' Motion to Compel Compliance with Subpoenas Pursuant to Federal Rule of Civil  
7 Procedure 45. I am familiar with all of the facts and circumstances set forth herein.

8 **Gen Digital Has Repeatedly Informed Plaintiffs That It Does Not Engage In, and Has No**  
9 **Documents Concerning, the Alleged Conduct**

10 3. Over the course of this litigation, Gen Digital has repeatedly informed Plaintiffs  
11 that it does not use cookies to share user browsing data collected through Avast Online Security  
12 & Privacy ("AOSP") with third-party advertisers, and that it lacks any documents concerning this  
13 alleged conduct.

14 4. For example, in the Joint Case Management Statement filed by the parties on April  
15 24, 2024, Gen Digital stated that "AOSP does not use third-party cookies in any way, let alone to  
16 transfer user browsing data to third-party advertisers," and that it "welcome[d] []appropriately  
17 tailored discovery, which will confirm that [Gen Digital] do[es] not engage in the conduct alleged."  
18 Dkt. 73 at 5, 9.

19 5. On June 10, 2024, Gen Digital served Plaintiffs with its Responses and Objections  
20 to Plaintiffs' First Set of Requests for Production (the "Gen Digital's R&Os"), excerpts of which  
21 are attached hereto as Exhibit 1. Among other things, Gen Digital's R&Os stated that Gen Digital  
22 "has no documents concerning its alleged 'use' of third-party advertising cookies 'associated with  
23 AOSP,' because Gen Digital does not in fact use any third-party advertising cookies in connection  
24 with AOSP, either to obtain information from users or to transmit data to third-party advertisers."  
25 Exhibit 1 at 9.

26 6. On June 17, 2024, the parties met and conferred (the "June 17 Meet and Confer")  
27 regarding, among other things, Gen Digital's R&Os. During that discussion, Plaintiffs noted that,  
28 in denying that it had relevant documents, Gen Digital had denied having documents relating to

the use of “third-party advertising cookies” to share AOSP user browsing data with third-party advertisers, and asked whether Gen Digital was withholding documents based on a particular interpretation of “third-party advertising cookies.” Plaintiffs asked whether Gen Digital could provide a more categorical representation that it does not share AOSP user browsing data with third-party advertisers. *See* Declaration of Jonathan Rotter in Support of Plaintiffs’ Motion to Compel Compliance with Subpoenas Pursuant to Federal Rule of Civil Procedure 45 (“Rotter Declaration”), Dkt. 97-3, Ex. A.

7. Gen Digital responded on the call that the term “third-party advertising cookies” was used in Gen Digital’s R&Os because that was the term used in Plaintiffs’ allegations in the Amended Complaint, and that Gen Digital was not withholding documents based on any particular construction of the term. Subsequently, on July 8, 2024, Gen Digital further responded to Plaintiffs in writing, categorically representing that, during the relevant time period, “Avast has not shared (and does not today share) AOSP user browsing data with third-party advertisers *via any means*.” *Id.* (emphasis in original).

**Gen Digital Has Voluntarily Provided Information to Plaintiffs That Explains Why They Have Observed Cookies in Transmissions Sent from AOSP to Avast Servers**

8. On May 9, 2024, Gen Digital served its initial discovery requests on Plaintiffs, including interrogatories seeking the basis for their contentions that AOSP uses cookies to share browsing data collected through AOSP with third-party advertisers.

9. On June 10, 2024, Plaintiffs served their initial responses to these interrogatories, in which they objected to the interrogatories and otherwise provided scant detail regarding the basis for their allegations.

10. During the June 17 Meet and Confer, Gen Digital requested that Plaintiffs provide additional detail regarding the basis for their allegations, including samples of the sort of transmissions from AOSP that Plaintiffs contend contain cookie and browsing data. Rotter Decl., Ex. A.

11. Subsequently, on July 12, 2024, Plaintiffs served their Supplemental Responses and Objections to Gen Digital’s Interrogatories (“Plaintiffs’ Supplemental R&Os”), true and correct

1 excerpts of which are attached hereto as Exhibit 2.<sup>1</sup> Plaintiffs’ Supplemental R&Os explained that  
 2 Plaintiffs had observed cookie data included in the traffic sent through their browsers from AOSP  
 3 to urlite.ff.avast.com (the “URLite Service”), and included exemplar screenshots. *See* Exhibit 2  
 4 at 10-18. Plaintiffs asserted that *Avast* was “embedding” the cookie data in these transmissions,  
 5 along with the data the transmissions contained from AOSP about the websites users were visiting.  
 6 *Id.* at 10-11. Plaintiffs further asserted that they believed, based on “information and belief,” that,  
 7 upon receiving these sorts of transmissions from users, Avast was then passing on the cookie data  
 8 combined with the user browsing data “to third-party advertising partners’ servers.” *Id.* at 11.  
 9 Plaintiffs explained that they believed some of these cookies “act as or include” individual  
 10 identifiers, and thus allow the third-party advertisers allegedly receiving this data to link the user  
 11 browsing activity to individual users. *Id.* at 18-20.

12 12. On July 23, 2024, the parties had another meet and confer, during which Gen  
 13 Digital explained to Plaintiffs that the cookie data identified in Plaintiffs’ Supplemental Responses  
 14 and Objections was not being “embedded” by AOSP, but was instead being automatically  
 15 appended by the user’s browser, because the domain attribute of the cookies is set to “avast.com,”  
 16 and the communications were being sent to a server—the URLite Service—that operates on an  
 17 avast.com subdomain. Gen Digital further explained that this was an incidental byproduct of how  
 18 cookies and browsers work, and that the URLite Service did not do anything with any cookie data  
 19 sent to it.

20 13. On August 16, 2024, Gen Digital sent Plaintiffs a letter, along with accompanying  
 21 documentation, to explain these points in more detail. *See* Declaration of Atif Hashmi in Support  
 22 of Plaintiffs’ Motion to Compel Compliance with Subpoenas Pursuant to Federal Rule of Civil  
 23 Procedure 45, Dkt. 97-2, Exhibit B. Among other things, the letter explained that “the cookie data  
 24 included in the headers of the[] transmissions [made by AOSP to the URLite Service] is (a) not  
 25 requested by [AOSP] and (b) not used after the transmissions are received by Avast servers.” *Id.*  
 26 at 1.

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27  
 28 <sup>1</sup> Specifically, these excerpts are taken from the Supplemental R&Os from Plaintiff Grace Lau. The Supplemental R&Os from the other Plaintiffs were similar in all material respects.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed on September 6, 2024, at New York, New York

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5 By /s/ Serrin Turner  
6 Serrin Turner  
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